

UNITED STATES DISTRICT COURT

for the
Eastern District of Michigan

W.E.T. Automotive Systems Limited,

Plaintiff,

v.

Case No. 2:10-cv-11652-DML-MJH

Hon. David M. Lawson

Amerigon, Inc.,

Defendant.

SUMMONS IN A CIVIL ACTION

To: Amerigon, Inc.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) - or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jeffrey P. Thennisch
29 W. Lawrence Street
Suite 210
Pontiac, MI
48342

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DAVID J. WEAVER, CLERK OF COURT

By: s/ C. Greverbiehl
Signature of Clerk or Deputy Clerk



Date of Issuance: April 23, 2010

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

W.E.T. Automotive Systems, Limited.

Plaintiff(s),

Case No. 10-11652

v.

Judge David M. Lawson

Amerigon, Inc.

Magistrate Judge Michael Hluchaniuk

Defendant(s).

REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court, Eastern District of Michigan, on the following ☒ Patents or ☐ Trademarks

	PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1	5,597,200	01/28/1997	Amerigon, Inc.
2	6,700,052	03/02/2004	Amerigon, Inc.
3			
4			
5			
6			
7			
8			
9			
10			

To list additional patent/trademark numbers, please attach another page with the number, date and holder.

Date: May 3, 2010



P51499

Dobrusin & Thennisch PC

29 W. Lawrence Street

Suite 210

Pontiac, Michigan 48342

248-292-2920

jeff@patentco.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

W.E.T. Automotive Systems, Limited

Plaintiff(s),

Case No. 10-11652

v.

Judge David M. Lawson

Amerigon, Inc.

Magistrate Judge Michael Hluchaniuk

Defendant(s).

**STATEMENT OF DISCLOSURE
OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST**

Pursuant to E. D. Mich. LR 83.4, W.E.T. Automotive Systems, Limited

makes the following disclosure: (NOTE: A negative report, if appropriate, is required.)

1. Is said corporate party a subsidiary or affiliate of a publicly owned corporation?

Yes ☒ No ☐

If the answer is yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party.

Parent Corporation/Affiliate Name: W.E.T. Automotive Systems, AG

Relationship with Named Party: Corporate Parent

2. Is there a publicly owned corporation or its affiliate, not a party to the case, that has a substantial financial interest in the outcome of the litigation?

Yes ☒ No ☐

If the answer is yes, list the identity of such corporation or affiliate and the nature of the financial interest.

Parent Corporation/Affiliate Name: W.E.T. Automotive Systems, AG

Nature of Financial Interest: Corporate Parent

Date: May 3, 2010



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Dobrusin & Thennisch PC
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Suite 210
Pontiac, Michigan 48342
248-292-2920
jeff@patentco.com

CIVIL COVER SHEET

County in which action arose Wayne

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

W.E.T. Automotive Systems Limited

DEFENDANTS

Amerigon, Inc.

(b) County of Residence of First Listed Plaintiff Out of State (Ontario Canada)
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Wayne
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
(see attached)

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Renportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 2201 et seq. and 35 USC 101 et seq.

Brief description of cause:
Declaratory Judgment for Non-Infringement and Invalidity of U.S. Patents

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

Hon. John Corbett O'Meara

DOCKET NUMBER

10-10527

DATE

April 23, 2010

SIGNATURE OF ATTORNEY OF RECORD

Jeffrey P. Tammisch (P51499)

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☒ Yes
☐ No

If yes, give the following information:

Court: U.S. District Court for ED of Michigan / U.S. District Court for the CD of California

Case No.: 10-10527 ; 09-08466(dismissed)

Judge: John Corbett O'Meara / R. Gary Klausner

Notes : The present action involves the same parties in pending case No. 10-10527, but relates to separate transactions/occurrences and separate patent rights.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

W.E.T. AUTOMOTIVE SYSTEMS LIMITED,

Plaintiff,

v.

AMERIGON, INC.,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

ATTACHMENT TO CIVIL COVER SHEET

I.(c) Attorney's (Firm Name, Address, and Telephone Number)

Dobrusin & Thennisch PC, 29 W Lawrence Street, Suite 210, Pontiac, MI 48342; (248) 292-2920; Attys: Jeffrey P. Thennisch, Eric M. Dobrusin, Eric R. Kurtycz

Steptoe & Johnson LLP, 115 South La Salle Street, Suite 3100, Chicago, IL 60603; (312) 577-1265; Atty: Thomas G. Pasternak

Steptoe & Johnson LLP, 1330 Connecticut Ave., NW, Washington, DC, 20036; Telephone: (202) 429-3000; Attys: Tremayne Norris, Tiffany Miller

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

W.E.T. AUTOMOTIVE SYSTEMS LIMITED,

Plaintiff,

V.

AMERIGON, INC.,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff W.E.T. Automotive Systems Limited ("W.E.T."), by and through its undersigned counsel, states and alleges as follows:

NATURE OF THE ACTION AND JURISDICTION

1. This is an action for Declaratory Judgment under 28 U.S.C. §§ 2201, *et seq.*, and under the laws of the United States concerning actions related to patents under 28 U.S.C. § 1338(a), arising from an actual controversy between the parties with regard to the invalidity, unenforceability, and noninfringement of United States Patent Nos. 5,597,200 and 6,700,052.

2. Amerigon Inc. (“Amerigon”) is a corporation organized and existing under the laws of the state of Michigan and regularly conducts business in Michigan. Accusations of infringement made by Amerigon, upon which this Complaint is based, were made in this District. This Court therefore has personal jurisdiction over Amerigon.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(b) because Amerigon regularly conducts business in this judicial district and certain of the acts described of herein occurred in this judicial district, including but not limited to accusations of infringement made by Amerigon, upon which this Complaint is based.

THE PARTIES

4. Plaintiff W.E.T. is a Canadian corporation having a principal place of business at 3445 Wheelton Drive, Windsor, ON NW8 5A6, Canada.

5. On information and belief, Defendant Amerigon is a corporation organized and existing under the laws of the state of Michigan, with its offices and principal place of business at 21680 Haggerty Road, Suite 101, Northville, Michigan 48167.

THE PATENTS-IN-SUIT

6. On information and belief, Amerigon is the owner of United States Patent No. 5,597,200 (hereinafter “the ‘200 patent”)(Exhibit A), issued on January 28, 1997, for “A Method and Apparatus for Climate Control of an Individualized Occupant Seat.”

7. On information and belief, on November 28, 2001 Amerigon filed Application No. 09/996,439 (hereinafter “the ‘439 application”) with the United States Patent and Trademark Office (hereinafter “USPTO”) for the reissue of the ‘200 patent.

8. On information and belief, Amerigon is the owner of United States Patent No. 6,700,052 (hereinafter “the ‘052 patent”)(Exhibit B), issued on March 2, 2004, for a “Flexible Thermoelectric Circuit.”

AMERIGON'S THREATS OF INFRINGEMENT

9. W.E.T. offers to sell and sells within this district a product that it calls ACTIVE COOLS.
10. On several occasions, including in 2008, in view of sales of the ACTIVE COOLS product, Amerigon's legal counsel sent correspondence to W.E.T.'s legal counsel indicating its belief that W.E.T.'s prospective and/or current products infringed one or more claims of the '200 patent. In meetings during 2009, Amerigon Director of Engineering, David Marquette made repeated assertions that the ACTIVE COOLS product infringed the '200 patent, on behalf of Amerigon against W.E.T.
11. Amerigon also has indicated its belief that W.E.T.'s prospective and/or current products infringed one or more claims of the '052 patent.
12. Through its actions and conduct, Amerigon has put W.E.T. in the position of either continuing to engage in behavior that Amerigon asserts is illegal or abandoning that which W.E.T. has a right to do, *i.e.*, continuing to manufacture and/or distribute its climate-controlled automotive seating.
13. Through its actions and conduct, Amerigon has created an apprehension on the part of W.E.T. that it may be sued for infringement of the patents discussed herein and Amerigon has created a substantial controversy between parties Amerigon and W.E.T., who have adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

COUNT 1: DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '200 PATENT

14. W.E.T. incorporates the allegations of paragraphs 1-13 as if fully set forth herein.
15. Amerigon has alleged that W.E.T. infringes the '200 patent.

16. W.E.T. does not infringe any valid claim of the '200 patent and has not induced or contributed to the infringement of any valid claim of the '200 patent by another.

17. All claims of the '200 patent call for a "support member" or "cushion" that has an air flow channel extending through it and "at least one air subchannel".

18. Among other features absent from products sold and/or by W.E.T. under the name ACTIVE COOLs, such products do not include "a channel" and "at least one subchannel" through which airflow occurs, as claimed.

19. W.E.T. is entitled to a judicial declaration that it does not infringe the '200 patent.

COUNT 2: DECLARATORY JUDGMENT OF INVALIDITY OF THE '200 PATENT

20. W.E.T. incorporates the allegations of paragraphs 1-19 as if fully set forth herein.

21. On information and belief, the '200 patent is invalid for failure to meet the conditions of patentability set forth in the United States Patent Act, Title 35 U.S.C., (including but not limited to one or more of 35 U.S.C. § 102, § 103, and/or § 112). W.E.T is entitled to a judicial declaration that the '200 patent is invalid.

COUNT 3: DECLARATORY JUDGMENT OF UNENFORCEABILITY OF THE '200 PATENT

22. W.E.T. incorporates the allegations of paragraphs 1-21 as if fully set forth herein.

23. U.S. Patent No. 5,598,200 granted on January 28, 1997.

24. On or about January 27, 1999, Amerigon filed an application for a broadening re-issue patent based on the '200 patent (serial No. 09/239,054)

25. On or about April 27, 1999, Amerigon filed an Information Disclosure Statement in which Amerigon cited information as material to patentability that included U.S. Patent Nos. 3,136,577; 3,550,523; 4,777,802; and 4,923,248.

26. During prosecution of the '200 patent, and during prosecution of the application for reissue of the '200 patent, Amerigon represented that it was a licensee of U.S. Patent Nos. 4,777,802; and 4,923,248.

27. On September 17, 1999, the United States Patent and Trademark Office (USPTO) rejected claims under 35 U.S.C. 102(b), including Claim 1 of the '200 patent, as being anticipated by U.S. Patent No. 3,550,523.

28. In an Amendment filed on or about March 17, 2000, Amerigon filed an Amendment, in which Amerigon amended claims, including patent claim 1 of the '200 patent, seeking to overcome the rejection of claims in view of U.S. Patent No. 3,550,523.

29. From the Amendment filed on or about March 17, 2000 until November 11, 2008, Amerigon kept claims, including the original claim 1, in its amended form.

30. Prior to November 11, 2008 Amerigon made no argument to the USPTO to distinguish original '200 patent claim 1 or any of the original independent patent claims from U.S. Patent No. 3,550,523.

31. On November 28, 2001, Amerigon filed a new application that it claimed to be a "continuation of prior application 09/239,054, which the USPTO assigned as U.S. Serial No. 09/996,439.

32. On or about November 11, 2008, in application Serial No. 09/996,439, Amerigon filed a set of claims that corresponded identically with claims from the original patent, and alleged that “the rejection of these claims in the ‘054 application was improper”.

33. On April 30, 2009, the USPTO rejected the Amerigon claims 1-9 again, on the basis of 35 U.S.C. 102(b), as anticipated by either Japanese publication 5-10700 or Benzick (2,826,135).

34. On July 28, 2009, Amerigon again cancelled claims 1-9.

35. The bad faith of Amerigon is further evidenced by evidence of Amerigon acknowledging that it had indeed claimed more than it was entitled to claim.

36. On or about October 4, 2009 Amerigon’s Director of Engineering, David Marquette executed a Supplemental Reissue Declaration Under 37 CFR 1.175, in which Mr. Marquette testified that he believed “the original patent to be wholly or partly inoperative or invalid by reason of the patentee claiming more than the patentee had a right to claim in the patent.”

37. Mr. Marquette has given similar testimony to the USPTO on April 7, 2010.

38. In the face of the above facts, in bad faith, Amerigon has made repeated assertions to W.E.T. of infringement of the ‘200 patent.

39. In the face of the above facts, in bad faith, on or about August 28, 2008 Amerigon sent a threatening communication to W.E.T. alleging patent infringement of the ‘200 patent’s existing claims.

40. In the face of the above facts, in bad faith, on or about November 7, 2008 Amerigon sent a further communication to W.E.T. alleging patent infringement of the '200 patent's existing claims.

41. On or about August 20, 2009, Amerigon's Director of Engineering, David Marquette met with a representative of W.E.T. and once again asserted infringement of the '200 patent.

42. Amerigon did this despite that fact that Amerigon knew that claims of the '200 patent (including claim 1, which Amerigon alleged was infringed), in their granted form, were cancelled and deemed to be invalid by the PTO.

43. Amerigon asserted claim 1 was infringed, even though Amerigon has known that claim 1 of the '200 patent, in its granted form, had to be amended and was deemed to be invalid by the PTO.

44. Amerigon has asserted claim 1 was infringed, even though Amerigon has known that the construction of the claims cannot read on the W.E.T ACTIVE COOLS product, which *inter alia* does not include any sub-channel feature.

45. On information and belief, Amerigon has made assertions to customers of W.E.T. that the activities of W.E.T. pertaining to the ACTIVE COOLS product infringe the '200 patent.

46. Amerigon has represented on numerous occasions that it holds a dominant market share in the field to which the '200 patent pertains and in which Amerigon and W.E.T. directly compete.

47. On information and belief, Amerigon has asserted the '200 patent against W.E.T. with an anti-competitive purpose to exclude W.E.T. from lawfully competing with Amerigon.

48. Under the circumstances, the infringement allegations by Amerigon were and continue to be objectively baseless, as no reasonable litigant can or could have realistically expect success on the merits.

49. Upon information and belief, at the time when Amerigon made its infringement allegations, Amerigon did so intentionally, in bad faith, and with intention to exclude W.E.T. from lawfully competing with Amerigon.

50. Upon information and belief, the conduct of Amerigon constitutes unclean hands and/or misuse of the '200 patent and precludes enforcement of the '200 patent and any of its progeny.

51. As a result of its conduct, and reliance by W.E.T. upon the same, Amerigon is estopped from, and/or the doctrine of laches precludes Amerigon from, asserting infringement of the '200 patent by W.E.T.

COUNT 4: DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '052 PATENT

52. W.E.T. incorporates the allegations of paragraphs 1-51 as if fully set forth herein.

53. Amerigon has alleged and claimed that W.E.T. infringes the '052 patent.

54. All claims of the '052 patent call for a thermoelectric configured or constructed for flexing.

55. Among other features absent from products sold and/or by W.E.T. under the name ACTIVE COOLS, such products do not include a thermoelectric configured or constructed for flexing as claimed.

56. W.E.T. does not infringe any valid claim of the '052 patent and has not induced or contributed to the infringement of any valid claim of the '052 patent by another.

57. W.E.T. is entitled to a judicial declaration that it does not infringe the '052 patent.

**COUNT 5: DECLARATORY JUDGMENT OF INVALIDITY OF THE '052
PATENT**

58. W.E.T. incorporates the allegations of paragraphs 1-57 as if fully set forth herein.

59. On information and belief, the '052 patent is invalid for failure to meet the conditions of patentability set forth in the United States Patent Act, Title 35 U.S.C., (including but not limited to one or more of 35 U.S.C. § 102, § 103, and/or § 112). W.E.T. is entitled to a judicial declaration that the '052 patent is invalid.

PRAYER FOR RELIEF

WHEREFORE, W.E.T. respectfully prays for a judgment as follows:

- a) A declaratory judgment that the '200 patent be declared invalid,
- b) A declaratory judgment that the '200 patent and any of its progeny be declared unenforceable;
- c) A declaratory judgment that W.E.T. be declared not to have infringed the '200 patent;
- d) A declaratory judgment that the '052 patent be declared invalid and/or unenforceable;
- e) A declaratory judgment that W.E.T. be declared not to have infringed the '052 patent;

- f) A preliminary and permanent order enjoining Amerigon from in any way challenging or threatening patent infringement against W.E.T., any of W.E.T.'s current or prospective customers, distributors, dealers, licensees, agents, servants, or employees based on any of Amerigon's patents referenced in this Complaint.
- g) An order finding W.E.T. to have not violated any other rights of Amerigon in relation to the subject '200 and '052 patents.
- h) A declaration that this is an exceptional case, and an order awarding W.E.T. its reasonable costs and attorneys' fees, in accordance with 35 U.S.C. § 285 and other applicable law.
- i) An order awarding such other and further relief as the Court deems just and equitable.

JURY TRIAL DEMAND

Plaintiff demands a jury trial as to all issues so triable herein.

Dated: April 23, 2010

Respectfully Submitted,

By: /s/ Jeffrey P. Thennisch

* Pending Admission Under E.D. Mich. LR 83.20

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Eric R. Kurtycz (P70519)
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tnorris@steptoe.com
tmiller@steptoe.com

**Attorneys for Plaintiff W.E.T. Automotive
Systems Limited**

Index of Exhibits

<u>Exhibit</u>	<u>Description</u>
Exhibit A	US Patent Number 5,597,200
Exhibit B	US Patent Number 6,700,052 B2